

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,)	
)	
vs.)	DOCKET NO. 1:21-cr-426-CKK
)	
NICHOLAS P. HENDRIX)	

DEFENSE SENTENCING MEMORANDUM

Nicholas Hendrix is scheduled for sentencing via video on December 9, 2022, at 10 a.m. We suggest a sentence of 12 months probation with the standard and special conditions recommended in the PSR and Probation Recommendation, 50 hours of community service, \$500 in restitution and the required \$10 misdemeanor assessment. There are no pending PSR objections.

Nicholas Hendrix- Personal Background

Youth

Nicholas Hendrix (Nick) is a 35 year old disabled veteran. He was born in Portland, Maine to young, unmarried parents, Bill and Mary. PSR ¶ 29. His mother was just 18 when he was born. Mary mostly worked as a waitress while Nick was young and later in life she became a nurse. Nick's father eventually became an accountant. From the start, his parents' relationship was rocky and they separated when he was young. ¶ 30. He was an only child. When Nick was five, he and his mother moved to New Hampshire where they lived until he

graduated from High School in 2005. ¶ 34. Nick played sports in junior and high school, including baseball and ice hockey. ¶ 31. Although primary custody was with his mother, Nick and his father had a close relationship. Defense Exhibit 1, p. 6.

Military Service

After high school, Nick attended one semester at Southern Maine Community College before enlisting in the Army in 2006. ¶ 49. During his military career, Nick was deployed twice to Iraq. His experiences there left emotional scars and he was eventually diagnosed with PTSD in 2010. ¶ 40. In August 2006, following Basic and Infantry training, Nick was deployed to Ramadi, Iraq. His infantry company was sent there to support the 1st Armored Division. For four months Nick did daily foot patrols, route clearance and security for an outpost 3-4 miles from Camp Blue Diamond. He survived multiple mortar and rocket attacks, and saw many people injured by shrapnel. He participated in his first firefight, which lasted 15 minutes. It was the first time Nick had to kill someone while on patrol. Nick attended 14 memorials for fallen comrades during his 2006 deployment. ¶ 40. Defense Exhibit 1. In 2007, Nick injured his back while in the service. This injury later led to chronic back pain, for which he was prescribed opiate pain relief.

In June 2008, Nick was deployed to Salempak, Iraq. When he arrived, Nick was part of a Quick Reaction Force. They were called in to clear buildings and roads when there was

suspicion of hostile activity. This included explosives, armed people, blockades of vehicles or objects, anything that needed rapid attention. He did daily foot patrols, route and building clearance. On September 23, 2008, Nick was with his unit standing near a house. A young boy parked a bicycle at the house, spoke to the soldiers and went inside. A few minutes later, the boy and what appeared to be his parents emerged from the house armed with AK-47s and unprovoked, they opened fired on Nick and his unit. Several soldiers were shot, including the unit's medic. Nick rushed to the aid of a friend who had been shot in the neck. He was then called to aid a lieutenant who had been shot in the chest and head. The lieutenant died on the medic flight to the hospital. Nick was one of the riflemen in the lieutenant's 21 gun salute. This incident remains one of Nick's most haunting memories.

The Army recognized Nick's exceptional service awarding him The Army Achievement Medal for "Exceptionally meritorious service while assigned as a saw gunner." Defense Exhibit 1, p. 13. And The Army Commendation Medal for "Meritorious Service as a Team Leader." Id. p. 14. Nick received other awards as noted in block 13 of his DD-214 discharge summary. Id. p. 16, block 18. These include the Army Good Conduct Medal, National Defense Service Medal, Global War on Terrorism Medal, Iraq Campaign Medal with Campaign Star, Army Service Ribbon, Overseas Service Ribbon - twice, Combat Infantry Badge, and Driver and Mechanic Badge. Id. Nick was honorably discharged from Army active duty in September 2009 and returned to Portland, Maine. He completed reserve

duty and received his full Honorable Discharge on January 28, 2014. Defense Exhibit 1, p. 15.

Return to Civilian Life, PTSD, Addiction, Education and Employment

For several years following his active duty, Nick struggled with his mental health, excessive drinking, and opiate addiction. ¶ 42. He was diagnosed with PTSD in 2010. ¶ 40. He moved to NH and eventually back home with his mother. He tried several jobs; at a pizza parlor, as a snow-maker at a ski resort, driving a bread delivery truck—but none of them lasted long. Between 2009 and 2013, Nick had six different jobs. In 2013, Nick sought counseling for his chronic PTSD through a veteran services center in Portland, ME.

Despite his continuing struggle with PTSD and substance abuse, Nick enrolled in classes at Southern Maine Community Collage. He earned his associates degree in Metal Work in 2014. ¶ 46. He completed the five year apprenticeship program run by the Pipefitters Union, earning his pipefitter license in October 2020. ¶ 47.

Sobriety, Marriage and Family

In 2014, Nick married Heather Greenwood and they had their first child. Both he and Heather were addicted to substances, primarily opiates. In 2017, Nick's father died from a heroin overdose. Nick was close to his father and the death was devastating to him. ¶ 29. The shock of his father's death and the realization that his own drug abuse was affecting his

children led Nick and Heather to seek help with their addiction. In September 2018, Nick and Heather entered supported detox programs in Portland, Maine. ¶ 43. Once they had completed the detox, they went to separate in-patient rehabilitation facilities in Florida. Id. Once they had successfully completed the programs, they returned home to Maine.

Nick and Heather have been clean and sober since September 2018. They have five children, three children together and two sons from Heather's previous relationship. ¶¶ 32-33. Nick is a journeyman pipefitter and steadily employed. ¶ 52. He and Heather provide for the family and are working on paying down their accumulated debt. ¶ 56. Nick has an 80% VA disability rating, 50% being assigned to his service-related PTSD. ¶ 38. He maintains regular mental health treatment at the VA. His mother notes Nick's "huge positive changes" since his regained his sobriety. Defense Exhibit 1, page 6.

Nick Is Deterred and Remorseful

Nick was arrested May 27, 2021. He has been on federal bail for eighteen months. He has done well on bail. He pled guilty and has accepted responsibility for his conduct. He writes;

I wanted to personally write you a letter to say how sorry I am about my conduct on January 6th. I was wrong. I have thought about this every day. I should never have joined the parade that went to the Capital Building and I

should never have gone inside. I have pled guilty because I know it was illegal.

I am ashamed and embarrassed by this.

Defense Exhibit 1, p.1.

He has shared his remorse with his wife Heather who writes:

He has told me how sorry he is for going. It eats him up inside that he broke the law. After this was over and he saw the news and what happened that day he told me he was embarrassed and regretting being part of that. He distanced himself from the social media people who had been spreading what turned out to be lies.

Defense Exhibit 1, p.2-3.

Nick showed his remorse soon after the event. When contacted by the FBI on January 21, 2021, he agreed to meet with the agents. Gov. Memo p. 16. He admitted his conduct including entering the Capital. He admitted the conduct was illegal. Id. p. 17. He allowed the agents to have photographs and video from his phone. Id. Nick provided his confession and the evidence against himself voluntarily. Without counsel. Without any promises. Agents again met with Nick on March 25, 2021. He answered their questions and provided physical items they asked about. Id. Again without counsel and without any promises. Unlike some defendants, Nick did not self aggrandize on social media. Nor to the press. He did not defend

his conduct. Rather, Nick was cooperative and remorseful from the outset. Ten of the fourteen photographs included in the Government's memorandum came from Nick's own phone - photos he gave to the agents. Nick has told friends and family what he did, that it was wrong, that he broke the law, pled guilty and is sorry. This is reflected in the letters in Exhibit 1. Tell others is a public admission and sign of remorse.

Nick has been on bail with conditions for 18 months. He has not relapsed. He has not given press interviews or made social media posts. Rather, he has not only admitted his guilty, he has voluntarily pre-paid restitution and the assessment. Counsel is unaware of any other January 6th defendant having paid restitution in advance of sentencing.

The Guidelines recognize that military service may be considered in a downward departure. §5H1.11. The Government argues that Nick's conduct is a contradiction of his former military service. Gov. Memo p. 22. We have learned from the recent Congressional Hearings that President Trump, at the time Commander-in-Chief, personally called on Americans to come to Washington and protest. Among his many tweets¹ President Trump, the sitting President sent:

- "MOST CORRUPT ELECTION IN U.S. HISTORY!" 12/13/20
- "Statistically impossible to have lost the 2020 Election" and "Big protest in DC on

¹ The quoted tweets are all saved at <https://www.thetrumparchive.com/>

January 6th. Be there, will be wild!” 12/19/20

- “See you in Washington, DC, on January 6th. Don’t miss it.” 12/27/20
- “JANUARY SIXTH, SEE YOU IN DC!” 12/30/20
- “The BIG Protest Rally in Washington, D.C., will take place at 11.00 A.M. on January 6th. StopTheSteal!” and ““January 6th. See you in D.C.” 1/1/21

President Trump re-sent tweets by others including:

- “We are excited to announce the site of our January 6th event will be The Ellipse in the President’s Park, just steps from the White House!” 1/3/21
- “If you are planning to attend the peaceful protests in DC on the 6th, I recommend wearing a body camera. The more video angles of that day the better.” 1/3/21

On January 6, 2021, President Trump addressed the “Rally.”²

- “We’re gathered together in the heart of our nation’s capital for one very, very basic simple reason: To save our democracy.”
- “And you have to get your people to fight. And if they don’t fight, we have to primary the hell out of the ones that don’t fight.”
- “Now, it is up to Congress to confront this egregious assault on our democracy. And after this, we’re going to walk down, and I’ll be there with you, we’re going to walk down, we’re going to walk down. Anyone you want, but I think right here, we’re

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<https://www.npr.org/2021/02/10/966396848/read-trumps-jan-6-speech-a-key-part-of-impeachment-trial>

going to walk down to the Capitol, and we're going to cheer on our brave senators and congressmen and women, and we're probably not going to be cheering so much for some of them. Because you'll never take back our country with weakness. You have to show strength and you have to be strong. We have come to demand that Congress do the right thing and only count the electors who have been lawfully slated, lawfully slated."

- "I know that everyone here will soon be marching over to the Capitol building to peacefully and patriotically make your voices heard."
- "You will have an illegitimate president. That's what you'll have. And we can't let that happen."
- "Make no mistake, this election was stolen from you, from me and from the country."
- "We won in a landslide. This was a landslide. They said it's not American to challenge the election. This the most corrupt election in the history, maybe of the world."
- "And we fight. We fight like hell. And if you don't fight like hell, you're not going to have a country anymore. Our exciting adventures and boldest endeavors have not yet begun. My fellow Americans, for our movement, for our children, and for our beloved country."
- "So we're going to, we're going to walk down Pennsylvania Avenue. I love Pennsylvania Avenue. And we're going to the Capitol, and we're going to try and

give. The Democrats are hopeless – they never vote for anything. Not even one vote. But we’re going to try and give our Republicans, the weak ones because the strong ones don’t need any of our help. We’re going to try and give them the kind of pride and boldness that they need to take back our country. So let’s walk down Pennsylvania Avenue.”

Nick went to the rally that the President asked he and all “patriots” to attend. Nick was not armed. Nick was not wearing combat or protective gear. He was provided the T-shirt and sign as part of the rally. He did not push or assault anyone. He says nothing while recording video of the events. He is inside for only 90 seconds. He did not break anything. He did not take or steal anything. Nick admits he was wrong. He accepts responsibility and has pled guilty. It is now clear to any objective observer that the then sitting President of the United States instigated the event. Former President Trump used Nick Hendrix. And Nick regrets that.

Looking Forward

President Biden in March, 2022 introduced the Unity Agenda which includes as a major objective “supporting our veterans — fully supporting them.”³ This includes

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<https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/03/08/remarks-by-president-biden-on-supporting-veterans-as-part-of-the-unity-agenda/>

improving the health of veterans, their mental health and policies through the VA to support veterans after their military service. This was announced at his State of the Union Address.

We see the value to Nick of the treatment he is getting from the VA. Nick has been sober for four years. His treatment provider, LaTonya Carrol explains, “He has been an exemplary patient to this clinic. Shows up early always clean with a positive attitude.”

Defense Exhibit 1, p. 9. His union business manger writes,

Through many difficult jobs Mr. Hendrix has completed his Apprenticeship and is a Journeyman Pipefitter. Mr. Hendrix is an asset to our jobs as he is well liked by our membership and a very talented pipefitter. He takes his jobs seriously and safety is a concern of his and he looks out for his fellow workers.

Letter of Anthony Sirois, Exhibit 1, p.4.

The photographs in Defense Exhibit 1 at pages 21-25 show Nick on job sites and the type of work he does. Coworker Troy Fogg shares with the court that he and Nick were in the same pipfitters apprenticeship, graduated to Journeyman in the same class and work together on projects. Troy is also a veteran having served in the Marines in Afghanistan. Nick has shared with Troy his PTSD and struggle with substance abuse. Troy saw when Nick was using, when Nick got treatment and has viewed Nick’s recovery and sobriety. “Since then, Nick has been clean and sober and has never asked to borrow money.” Defense Exhibit 1, p. 7. “He has a great work ethic, loyal to his friends and family, an overall joy to be around.

I enjoy working with Nick he makes the day better just by being himself.” Id. It bodes well for Nick that he has close friends and is willing to share with them his mental health and substance troubles. Many people hide their difficulties or lack relationships close enough to share. That Nick’s friend Troy knows of Nick’s struggles and that both he and Nick are able to discuss them, and share that publicly with the court is a strong sign of recovery, honesty and maturity. So too is the comment from job Safety Advocate William Wendt II noting that at a weekly worker dinner Nick was maintained his sobriety while, “others around him were having alcoholic beverages.” Defense Exhibit 1, p. 10.

Family friend Debra Harmon writes:

My youngest son also has a substance abuse problem. He reached out to Nick because he needed someone to talk to. Nick drove to New Hampshire that night to support my son and tell him about his time in rehab. My son was grateful and relieved to hear of Nick’s positive experience. It helped him seek help which I am so grateful for.

Letter of Mary Harmon, Defense Exhibit 1, p. 8.

Conclusion

Nicholas Hendrix stands before the court facing the potential of a period of incarceration. To one side is federal prison. To the other is the continued rehabilitative path that Nick has undertaken. Government Exhibit 1 - the table of other cases - shows 72 cases

where the sentence was to a term of probation with no incarceration. Nick's conduct on January 6, 2021, was no worse than that of the 72 others sentenced to probation. He has been on bail doing well for eighteen months. He has maintained his sobriety through this stressful period. PSR ¶ 45. He has obtained mental health treatment including counseling. PSR ¶¶ 41, 41a. He lives with his family and is employed. He provides the court with photos of his work. Defense Exhibit 1, pp. 21-25. He supports five children. He is maintaining his sobriety, engaged in healthy activities and has demonstrated his commitment to a positive and lawful life. He has the support of his family, employer, coworkers and friends. Nick has shown the court he is worthy of remaining in his community. A sentence of one year of probation with the standard and special conditions recommended by probation, 50 hours of community service, \$500 restitution and the required \$10 misdemeanor assessment is "sufficient but not greater than necessary" under the unique and specific facts and factors of this case and of Nicholas Hendrix's characteristics.

DATE: November 1, 2022

/s/ David Beneman
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CERTIFICATE OF SERVICE

I, **David Beneman**, attorney for **Nicholas Hendrix**, hereby certify that I have served, electronically, a copy of the **within “DEFENDANT’S SENTENCING MEMORANDUM”** upon **Karen Rochlin**, Assistant United States Attorney, United States Attorney's Office, Miami, FL and all counsel of record via the ECF system.

/s/ David Beneman

David Beneman

DATE: November 1, 2022

CC: Nicholas Hendrix